IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

OP.No. 8038 of 2003(F)

PETITIONER:

O.GOKULKUMAR, S/O.LATE MANIYAN NAIR.P.
AGED 36 YEARS, OTHAYATH HOUSE, FISHING HARBOUR ROAD, BEYPORE.P.O. KOZHIKODE DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

3. **DISTRICT EDUCATION OFFICER, KOZHIKODE.**

4. **THE MANAGER, SHREE RAMAKRISHNA MISSION, HIGHER SECONDARY SCHOOL, MEENCHANDA.P.O., KOZHIKODE DISTRICT.**

OP. NO.8038/2003

ADDL.R5 IMPLEADED.

ADDL.5. SMT. SITHARA, U.P.S.A. (PHYSICAL SCIENCE)
SHREE RAMAKRISHNA MISSION,
HIGHER SECONDARY SCHOOL,
MEENCHANDA.P.O , KOZHIKODE DISTRICT.

ADDL.R5 IS IMPLEADED AS PER ORDER DT. 24.6.03 IN CMP. NO.5314/2003.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH
SRI.R.PARTHASARATHY
SRI.R.K.MURALEEDHARAN
BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.8038/2003

ORDER ON CMP. NO.14038/2003 IN IA. 5315/2003

DISMISSED

07.08.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPLICATION DT. 17.11.01 SENT BY PETITIONER TO THE 4TH RESPONDENT.

EXT.P2:- COPY OF THE PETITION DT. 10.12.01 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P3:- COPY OF THE ORDER DT. 21.12.01 ISSUED BY 4HT RESPONDENT.

EXT.P4:- COPY OF THE JUDGMENT DT. 12.6.02 IN OP. NO.15572/02 PASSED BY THIS HONOURABLE COURT

EXT.P5:- COPY OF THE ORDER DT. 16.12.02 PASSED BY THE 4TH RESPONDENT, BEARING NO.B6-12517/02.

EXT.P6:- COPY OF THE PETITION DT. 20.1.03 ISSUED BY THE PETITIONER TO 4TH RESPONDENT.

EXT.P7:- COPY OF THE REPLY DT. 22.1.03 OF THE 4TH RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R4(a):- COPY OF THE JUDGMENT IN OP. NO.4527/03 DT. 18.3.03 OF THIS HONOURABLE COURT

EXT.R4(b):- COPY OF THE REVISION FILED BEFORE TH 1ST RESPONDENT DT. 18.2.03.
EXT.R4(c):- COPY OF THE ORDER OF THE DEO, DECLINING APPROVAL OF APPOINTMENT OF SMT.C.GEETHA IN LEAVE VACANCY.

EXT.R4(d):- COPY OF THE ORDER IN GO.(RT) NO.2611/03/G.EDN., DT. 8.7.03.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.8038 OF 2003

Dated this the 7th day of August, 2007

JUDGMENT

Petitioner's father Sri.P.Maniyan Nair, who was an H.S.A. in the 4th respondent's school, availed leave prior to retirement from 1.11.1989, when he was due to retire on 29.3.1990. His daughter Smt.O.Geetha, sister of the petitioner, who had an earlier stint of employment as Lower Grade Hindi Teacher from 1.6.1988 to 22.8.1988, was appointed as against that vacancy of H.S.A. (Hindi). Obviously, that was not in recognition of any Rule 51 A claim that she would have had on the basis of her earlier appointment as Lower Grade Hindi Teacher in the U.P.School. Sri.Maniyan Nair unfortunately died on 25.11.1989, just 24 days after his daughter entered as H.S.A. (Hindi) in the leave vacancy of her father. On 29.11.1989, the Management appointed Smt.O.Geetha as H.S.A. (Hindi) in the regular vacancy that arose owing to the demise of her father. Because of this situation, the span of the leave vacancy got reduced to be around 24 or 25 days and therefore, the statutory authorities did not

approve that appointment, while the DEO issued Ext.R4(c) order on 4.1.1990 approving the appointment of Smt.O.Geetha from 29.11.1989 in the regular vacancy as H.S.A. (Hindi). That proceedings has become final.

2. Sometime in 2001, the petitioner claimed that he is entitled to compassionate appointment in terms of Rule 51 B of Chapter XIV A K.E.R. and stated that though he had not made any written application, he had been scouting the office of the Manager with oral request for such appointment, even earlier. On being moved, this Court directed the DEO to consider the claim of the petitioner. That was considered and the DEO issued Ext.P5 order holding that the appointment of the petitioner's sister Smt.O.Geetha was not under Rule 51 B and that she had entered service of the school even before the death of her father. Accordingly, the Manager was directed to provide appointment to the petitioner under Rule 51 B of Chapter XIV A K.E.R.

3. While the case of the petitioner in this writ petition is that the Manager is not obeying the direction contained in Ext.P1

order, it is on record that the Manager moved the Government seeking revision of that decision of the DEO and the Government, by Ext.R4(d) has remitted the issue for re-consideration by the DPI, having regard to the pendency of this writ petition. That decision is therefore, quite categoric, that the statutory authorities, including the Government, would prefer to await a decision by this Court, in this writ petition, rather than consider and decide themselves, as to the entitlement of the petitioner as he claims.

4. As already noticed, Ext.R4(c) order of the DEO in favour of the sister of the petitioner approving her appointment in the regular vacancy with effect from 29.11.1989, i.e., four days after the demise of her father on 25.11.1989, has become final. The petitioner, however, takes the stand that being a Rule 51 A claim of his sister, referable to her earlier tenure from 1.6.1988 to 22.8.1988, her such appointment was essentially referable only to Rule 51 A of Chapter XIV A K.E.R., and therefore, such situation does not denude the petitioner of his rights under Rule 51 B for compassionate appointment. Going by Ext.R4(c), the

legality and propriety of which is not under challenge, and the motive of its maker, also not being in dispute, Smt.O.Geetha was appointed in the leave vacancy of her father and her appointment was as against the regular vacancy that occurred on 25.11.1989 as a result of the demise of her father. Obviously therefore, the appointment of Smt.O.Geetha as H.S.A. (Hindi) was in compliance of the statutory directions contained in Rule 51 B of Chapter XIV A K.E.R. It is not referable to Rule 51 A of Chapter XIV A because, Smt.O.Geetha's earlier appointment was as a Lower Grade Hindi Teacher and not as a H.S.A and there is no dispute on that. Such appointment would not bring to her any claim under Rule 51 A of Chapter XIV A.

5. The issue in hand can also be considered from yet another angle. According to the petitioner, Sri.P.Maniyan Nair left behind his widow, his daughter Smt.O.Geetha and his son, the petitioner. The materials on record show that the petitioner was around 23 years of age when he applied for compassionate appointment. The fact remains that immediately following the demise of Sri.Maniyan Nair, his daughter Smt.O.Geetha was

appointed as H.S.A.(Hindi) on a regular basis as against the regular vacancy. Therefore, immediately following the demise of Sri.Maniyan Nair, one of his legal representatives has obtained an employment that could fetch earnings to support the family, which is the basic concept behind providing compassionate appointment in terms of Rule 51 B of Chapter XIV A K.E.R. Going by the plethora of decisions governing the field, special mention of any of which, not being necessary, it has to be noticed that providing succor to the family following the demise of an employee is not only the prime, but the only basis for making a compassionate appointment. Viewed in this angle, one of the legal representatives of Maniyan Nair having been employed, there would be absolutely no legal justification to sustain a claim of his other child also for employment on compassionate grounds.

6. The result of the above discussion is that the petitioner is not entitled to compassionate appointment under Rule 51 B of Chapter XIV A K.E.R. on account of the demise of his father on 25.11.1989.

7. The petitioner's father died on 25.11.1989. Smt.O.Geetha is stated to be elder to the petitioner. The petitioner never claimed any appointment before he made the application some time in 2001. I am not inclined to accept the version of the petitioner that he had been making oral requests to the Manager, when his entitlement was to make an application before the DEO or the AEO as the case may be, if the Manager does not obey the statutory order contained in Rule 51 B of Chapter XIV A K.E.R.

For the aforesaid reasons, this writ petition is dismissed. The proceedings remitted to the DPI as per Ext.R4(d) will stand regulated by the findings and orders in this judgment.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.8038 OF 2003

JUDGMENT

7th AUGUST, 2007.

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